

Remarks:

Claims 1, 3-9, 12-17, 29, 61, 62, 69, 70, 72-75 and 87 are currently pending. In an action dated 6/30/2003, the Office indicated that all claims are in condition for allowance, but suspended prosecution. The current Office Action Indicates that claims 1, 61, 62, 69, 70, 72, 73 and 87 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,630,343, to Bartenschlager. That patent has a filing date of March 31, 2000, and claims priority to DE 199 15 178, filed on April 3, 1999. The '343 patent is cited as teaching a polynucleotide comprising a non-naturally occurring HCV sequence...comprising an adaptive mutation in the NS5A coding region that confers improved cell culture characteristics....

The Declaration of Dr. Keril Blight under 37 C.F.R. §1.131 (Declaration), filed herewith, establishes that the embodiments of the claimed invention described in the Examples of the instant application were reduced to practice prior to the filing date of the '343 patent. As stated therein at paragraph 4, the HCV RNA from cell culture selected colonies was sequenced, and the specific mutations described in the Example of the instant application were identified. Further, as stated at paragraph 5, it was determined that at least one of the mutations identified conferred improved cell culture characteristics to the polynucleotide comprising a non-naturally occurring HCV sequence, as claimed. Based on these experimental results, a skilled artisan would reasonably have expected the other identified mutations to confer the same improved cell culture characteristics.

Since the inventions of the instant claims were reduced to practice before the effective filing date of the cited reference (March 31, 2000), as established by the attached Declaration of Dr. Keril J. Blight, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e).

Claims 3-6, 12-17 and 29 are rejected under 35 U.S.C. §102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,630,343 to Bartenschlager. As discussed above, the inventions of the instant claims were reduced to practice before the effective filing date of the cited reference. Therefore, applicant respectfully requests reconsideration and withdrawal of the rejection.

Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bartenschiager. As previously discussed, the inventions of the instant claims were reduced to practice before the effective filing date of the cited reference. Therefore, applicant respectfully requests reconsideration and withdrawal of the rejection.

Conclusion:

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, she is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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